

11.503

to obtain performance by the contractor or to terminate the contract (see subpart 49.4). If delivery or performance is desired after termination for default, efforts must be made to obtain the delivery or performance elsewhere within a reasonable time. Efficient administration of contracts containing a liquidated damages clause is imperative to prevent undue loss to defaulting contractors and to protect the interests of the Government.

(d) If a contract provides for liquidated damages for delay, the Comptroller General, on the recommendation of the head of the agency concerned, is authorized and empowered by law to make a remission, that in the discretion of the Comptroller General is just and equitable, of the whole or any part of such damages.

11.503 Procedures.

(a) If a liquidated damages clause is to be used in a contract, the applicable clause and appropriate rate(s) of liquidated damages shall be included in the solicitation.

(b) If a liquidated damages clause is used in a construction contract, the rate(s) of liquidated damages to be assessed against the contractor should be for each day of delay and the rate(s) should as a minimum cover the estimated cost of inspection and superintendence for each day of delay in completion. Whenever the Government will suffer other specific losses due to the failure of the contractor to complete the work on time, the rate(s) should also include an amount for these items. Examples of specific losses are—

- (1) The cost of substitute facilities;
- (2) The rental of buildings and/or equipment; or
- (3) The continued payment of quarters allowances.

(c) If appropriate to reflect the probable damages, considering that the Government can terminate for default or take other appropriate action, the rate of assessment of liquidated damages may be in two or more increments which provide a declining rate of assessment as the delinquency continues. The contract may also include an overall maximum dollar amount or period of time, or both, during which liq-

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uidated damages may be assessed, to ensure that the result is not an unreasonable assessment of liquidated damages.

11.504 Contract clauses.

(a) The contracting officer may insert the clause at 52.211-11, Liquidated Damages—Supplies, Services, or Research and Development, in solicitations and contracts when a fixed-price contract is contemplated for supplies, services, or research and development (see 12.202).

(b) The contracting officer may insert the clause at 52.211-12, Liquidated Damages—Construction, in solicitations and contracts for construction, except construction contracts on a cost-plus-fixed-fee basis (see 12.202). If different completion dates are specified in the contract for separate parts or stages of the work, the contracting officer shall use the clause with its Alternate I.

(c) The contracting officer shall insert the clause at 52.211-13, Time Extensions, in solicitations and contracts for construction in which the clause at 52.211-12, Liquidated Damages—Construction, is used with its Alternate I.

[48 FR 42159, Sept. 19, 1983. Redesignated and amended at 60 FR 48241, Sept. 18, 1995]

Subpart 11.6—Priorities and Allocations

SOURCE: 51 FR 19714, May 30, 1986, unless otherwise noted. Redesignated at 60 FR 48241, Sept. 18, 1995.

11.600 Scope of subpart.

This subpart implements the Defense Priorities and Allocations System (DPAS), a Department of Commerce (DOC) regulation in support of authorized national defense programs (see 15 CFR part 700).

[51 FR 19714, May 30, 1986, as amended at 56 FR 41744, Aug. 22, 1991]

11.601 Definitions.

Authorized program, as used in this subpart, means a program approved by the Federal Emergency Management Agency (FEMA) for priorities and allocations support under the Defense Production Act of 1950, as amended (50